

KENNETH LEE BAKER,)
)
Plaintiff,)
)
v.) Case No.: 2:11-cv-04294-FJG
)
CITY OF COLUMBIA, CITY OF)
COLUMBIA OFFICERS, BRANDON)
CRITES, MATTHEW HIBLER, and)
ROB SANDERS,)
)
Defendant.)

COMES NOW Defendant City of Columbia, Missouri (“Defendant Columbia”),
by and through its attorneys, Schreimann, Rackers, Francka & Blunt, L.L.C., and for its
Answer to Defendants Brandon Crites and Matthew Hibler’s Cross Claim states to the
Court as follows:

2. Defendant Columbia, at this time, is without sufficient information or knowledge to form a belief as to the truth of the allegations of Paragraph 2, and therefore denies same.

3. Defendant Columbia, at this time, is without sufficient information or knowledge to form a belief as to the truth of the allegations of Paragraph 3, and therefore denies same.

4. Defendant Columbia denies the allegations of Paragraph 4.

5. Defendant Columbia admits that Cross Claim Plaintiffs sent Defendant Columbia a request for defense and full indemnification. Defendant Columbia denies the remaining allegations of Paragraph 5.

FURTHER ANSWERING Defendant Columbia states as follows:

6. Defendant Columbia denies all allegations of the Cross Claim not expressly admitted herein.

7. Cross Claim Plaintiffs are estopped from claiming reimbursement of any alleged fees or expenses they may have incurred in that Cross Claim Plaintiffs' counsel filed his entry of appearance and waived service on behalf of Cross Claim Plaintiffs which prematurely created the need to file a responsive pleading to Plaintiff Baker's Complaint. Further, Cross Claim Plaintiff's counsel failed to respond to requests for communication with Defendant Columbia's attorneys and independent counsel retained to defend Cross Claim Plaintiffs which also resulted in any alleged expense Cross Claim Plaintiffs may have incurred prior to filing a responsive pleading.

8. Cross Claim Plaintiffs have rejected Defendant Columbia's offer of defense by independent counsel. As a result, Plaintiffs have materially breached any agreement between Plaintiffs and Defendant to provide Plaintiffs a defense or indemnity, and Defendant Columbia has been prejudiced by Cross Claim Plaintiff's actions.

9. Section 2-486 of the Defendant Columbia Code of Ordinances provides that all non-worker's compensation claims are governed by the Defendant Columbia's most recent excess insurance policy. Said Travelers Indemnity Company policy ("the Policy") contains the following provisions:

You and any other involved insured must:

a) Immediately send "your claim handling service" copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit;"

b) Authorize your "claim handling service" and us to obtain records and other information;

c) Cooperate and assist:

i) Your claim handling service in the investigation or settlement of the claims; and

ii) Us if we choose to investigate or settle such claims;

d) Cooperate and assist:

i) "Your claim handling service" in the defense against the "suit;" and

ii) Us if we choose to defend against such "suit;"

c. No insured will accept at the insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

Cross Claim Plaintiffs have breached said provisions by the actions set forth in paragraphs 7 and 8, and possibly in such further respects as will become better known during discovery.

10. Cross Claim Plaintiffs, by their actions in Paragraphs 7 and 8, have unclean hands, and possibly in such further respects as will become better known during discovery.

11. Cross Claim Plaintiffs, by their actions set forth in Paragraphs 7 and 8, have waived any claim to defense and indemnity.

12. Cross Claim Plaintiffs have materially violated their duty to cooperate (including those set forth above) with Defendant Columbia and therefore Defendant Columbia is discharged from any alleged obligation to defend and indemnify Cross Claim Plaintiffs.

13. Cross Claim Plaintiffs fail to state a claim upon which relief can be granted.

Respectfully Submitted,

SCHREIMANN, RACKERS,
FRANCKA AND BLUNT, L.L.C.

/s/Chris Rackers

Christopher P. Rackers, #41894

Brad C. Letterman, #52818

2316 St. Mary's Boulevard

Suite 130

Jefferson City, MO 65109

573/634-7580

573/635-6034 (facsimile)

cpr@srfblaw.com

Attorneys for Defendant City of Columbia

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2011, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and via regular U.S. Mail upon the following: Ron Netemeyer, 401 Locust Street, Suite 401, Columbia, MO 65201, attorney for Plaintiff, Gaylin Rich Carver, 712 East Capitol, Jefferson City, MO 65101, attorney for Defendants Crites and Hibler, and Joseph Marshall, 304 Cheyenne Lane, Clinton, AR 72031, attorney for Defendants Crites and Hibler.

/s/ Brad C. Letterman